

**\*HON'BLE SRI JUSTICE P.S. NARAYANA**

**+WRIT PETITION NO.1749 of 2004**

%19-10-2006

# Misbahuddin Babu Khan. .... PETITIONER

versus

\$Municipal Corporation of Hyderabad,  
represented by its Commissioner,  
Hyderabad. .... RESPONDENT

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioner: **Sri P.Sriraghuram.**

^**Counsel for Respondent: Smt G.Jyothi Kiran.**

? **Cases referred**

1. **2006(4) ALD 657.**
2. **2001(3) ALD 600.**
3. **2004(4) ALD 126.**

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.1749 of 2004

Dated 19.10.2006

Between:

Misbahuddin Babu Khan. .... PETITIONER

versus

Municipal Corporation of Hyderabad,  
represented by its Commissioner,

Hyderabad.

.... RESPONDENT

WRIT PETITION NO.1749 of 2004

ORDER:

WVMP.No.1343 of 2004 in WPMP.No.2276 of 2004 is coming up for hearing today. The learned counsel for the writ petitioner Sri P.Sriraghuram and the learned Standing Counsel Smt.G.Jyothi Kiran representing the respondent in the Writ Petition-vacate petitioner in WVMP No.1343 of 2006 made a request for final disposal of the Writ Petitioner.

2. Sri Sriraghuram, learned counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and would contend that inasmuch as the writ petitioner had proceeded with the construction of Block-A in pursuance of permit No.199/94, dated 4.3.2003, there cannot be any direction to stop the construction in relation to Block-A. The learned counsel also would submit that by virtue of the interim order granted by this Court on 31.3.2004, the writ petitioner had completed the construction of Block-A only, that too in accordance with the permit already granted and nothing beyond thereto. If any deviations or contraventions are there in relation to the already approved plan in relation to Block-A, the respondent in the Writ Petition-Municipal Corporation of Hyderabad is at liberty to initiate appropriate action in accordance with the provisions of Hyderabad Municipal Corporation Act, 1955. However, the learned counsel would submit that inasmuch as the construction of Block-A was made only in accordance with the approved plan, such action may not be warranted. Further, the counsel had clarified that inasmuch as the revised proposals had been submitted relating to Block B and Block C and the same had not been finalized, no construction as such had been commenced. The counsel also would submit that as far as the relevancy of TSLR entries is

concerned, the same being limited, the revised plans also may have to be examined in the light of the view expressed in DR.G.ANAND KUMAR REDDY vs. MUNICIPAL CORPORATION OF HYDERABAD<sup>1</sup>; HYDERABAD POTTERIES PRIVATE LIMITED vs. DISTRICT COLLECTOR, HYDERABAD<sup>2</sup> and DISTRICT COLLECTOR vs. N.KRISHNA MOHAN<sup>3</sup>.

3. On the contrary, Smt.Jyothi Kiran, learned Standing Counsel representing the Municipal Corporation of Hyderabad, the respondent in the Writ Petition-vacate petitioner, had taken this Court through the contents of the counter affidavit filed and would submit that in view of the fact that as per the TSLR entries roads are shown, there cannot be any approval of plan as such even in relation to the revised plan submitted in relation to Block B and Block C. The learned counsel also had taken this Court through the contents of the counter affidavit in detail and would submit that in the facts and circumstances of the case, the interim order to be vacated and the Writ Petition to be dismissed.

4. Heard the learned counsel.

5. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in directing stoppage of construction in Block-A of the property of the petitioner in pursuance of the permit No.199/94 dated 4.3.2003 and not releasing the plans on the revised proposals for construction of Block-B and Block-C in plot Nos. 8 and 9, Vijayapuri, Lalaguda, Hyderabad, as without jurisdiction, illegal and hit by Doctrine of Promissory Estoppel and consequently direct the respondent to release the plans for Block-B and Block-C and pass such other suitable orders.

6. It is the case of the writ petitioner that the property originally belonged to Lalabibi Saheba and Smt. Afsarunnisa Begum, who got the same in a partition decree on 24.6.1970 in OS.No.38 of 1964 on

the file of II Additional Chief Judge, City Civil Court, Hyderabad. The property was succeeded by the writ petitioner and three others i.e., Shafiuddin Babu Khan, Rafiqunnisa Begum and M.A.Aziz when both Lalabibi Saheba and Afsarunnisa Begum died in September, 1976 and July, 1977 respectively. It is also stated that the property was declared to be non-surplus under Urban Land (Ceiling and Regulation) Act 33 of 1976. It is also further stated that the writ petitioner and other co-owners had decided to develop this property by constructing apartments, and the other co-owners authorized him to file the present Writ Petition. It is also stated that the said property in plot Nos.8 and 9 is part of a lay out sanctioned by the Town Planning authorities. The lay out was made by Nawab Moin Yar Jung in the year 1341 Fasli = 1931 AD. The Vijayapuri area of Tarnaka was under Gram Panchayat and subsequently merged in MCH in 1981. The petitioner made an application to the revenue authorities as required under the Building Bye-Laws and Zoning Regulations for obtaining permission to construct and to give a No Objection Certificate. The Joint Collector gave a certificate No.F3/698/01 in February, 2001 stating that the land applied for NOC in plot Nos.8 and 9, Vijayapuri, Maredpally falls in TS.Nnos.7 and 9, Block-L, Ward No.137, Lalaguda village, which is classified as patta and hence, recommended to an extent of 7385 square meters subject to ULC clearance. Since ULC clearance was already obtained in proceedings No.E2.12395, 12397, 12399 and 12403 of 1976 dated 31.12.1994, the clearances from the Revenue Department was sought in favour of the petitioner. It is further submitted that the Municipal Corporation was pleased to grant sanction for Block A by proceedings dated 5.3.2003 and required permit was issued on payment of various charges as demanded by the Corporation, which was about Rs.25,40,202/-. This was for the stilt + 5 floors. Since then the construction is in progress and is in full swing. Thereafter the petitioner submitted a revised plan

including release of sanction for Block B and Block C in the same land. The petitioner had also paid the permit charges for the revised plan for Block B and Block C of an amount of Rs.7,00,881/- on 10.7.2003. Meanwhile a show cause notice was issued under Section 452 of HMC Act for a minor deviation for which a reply was submitted on 9.10.2003. As if acting on that said reply, the Corporation-respondent appears to have written a letter to the District Collector, Hyderabad, in which it is stated that one K.B.Chaudhury had submitted building plans to the South of the above said land on other side of 40' road along with T.S. records along with sketch plan issued by Mandal Revenue Officer, Lalaguda, in which it was found that a 30' wide road is passing in the proposed site belonging to the petitioner, which is recorded as TS No.8 and GVM road. Thus, the proposed site is bifurcated into two partitions on either side of 30' road i.e., T.S.Nos.7 and 9. It is further admitted that plot Nos.8 and 9 belonging to the petitioner fall in the lay out approved by the Zilla Parishad of Tarnaka area before merging in MCH and that a permission was granted for construction of the compound wall on 3.6.1982 in permit No.163/74/E and revised permission on 9.10.1982. There is ULC clearance. The respondent also observed that the matter was placed before the Building Committee, which include the nominee of SOULC, Deputy Tahsildar, with all the above referred records. However, it is further admitted the point of T.S.No.8 divided 30' road was not raised and the Building Committee recommended the proposal. Hence, permission was granted in permit No.199/94, dated 4.3.2003 and now the revised proposal is before the Corporation. It is stated that neither the Joint Collector nor the SOULC indicated about the existence of 30' road and the applicant has also not brought to the notice of the MCH. While granting permission earlier and seeking opinion of the Collector by the Chief Planning Commissioner, on the same day letter was addressed

to the writ petitioner stating that the opinion of the Collector was required about T.S.Nos.7, 8 and 9 separately along with TSLR sketch plans and therefore, the writ petitioner was informed to stop further construction forthwith till the matter is cleared by the Joint Collector, failing which further action will be taken as per Rules. It is also stated that the property belonging to the petitioner does not have a 30' road factually or legally. The alleged 30' road is not found in Khasra Pahani or village plan. Apparently, it was created at the time of town survey without following procedure, which evidently is not binding on the petitioner and cannot be taken cognizance legally. It is also further stated that the following are the undisputed facts with regard to the nature of the property, the ownership, the classification and the validity of the proceedings of the public authorities. The devolution of the title to the petitioner and his co-owners is not in dispute, the lay out sanctioned in the year 1341 Fasli = 1931 AD is not in dispute, the declaration for the Urban

Land Ceiling by the petitioner's predecessors in title is not in dispute, the sanction of permission to construct a compound wall in 1981 is another factor to show title position of the plots 8 and 9 by the petitioner and their predecessors in title. The petitioner has submitted all the necessary documents and has not misrepresented any facts as is admitted in their letter by the respondent. The procedure in granting permit for Block-A in March, 2003 is also not in any way irregular. Therefore, the petitioner and their predecessors in title, who were in continuous possession when the town survey proceedings were taken place some time in 1965-70 in the Municipal Corporation of Hyderabad area, is not binding on the petitioner. There has been no notice either to the petitioner or to any other person or authority. The TSLR with respect to TS No.8 has thus, not coming into force and such entry is not binding on the petitioner. It consequently has to be ignored by the respondent as *void ab initio*. Specific stand was taken that the

petitioner had acted upon the permission granted with regard to Block-A and made major construction spending huge amounts. To stop construction at this stage will cause irreparable loss and damage and cause even prejudice to the execution of the project which will result in huge financial loss. It is further stated that the petitioner acted in good faith on the permit granted by the respondent which is not in violation of any legal provisions and was granted after following due process of law. It is also further stated that the respondent is estopped from reviewing the permit with respect to Block-A and not proceeding with the revised plans with Block-B and Block-C under the Doctrine of Promissory Estoppel as on the promise of valid permit granted with respect to Block A and on the strength of the certificate issued by appropriate authorities for Block B and C which are same as of Block A, the petitioner had altered his position to his detriment, and on such promise of the respondent such development was made by the petitioner is not contrary to law. Hence, the principle of Promissory Estoppel is applicable in all fours. Specific stand was taken that the respondent had no jurisdiction to review the permit already granted and refuse to proceed with granting of permit with regard to B and C blocks on the revised proposals. In such circumstances, the petitioner was left with no other option except to approach this Court by filing the present Writ Petition and as already referred to supra, obtained an interim order.

7. The Municipal Corporation-respondent in the Writ Petition filed Vacate Application WVMP No.1343 of 2006. In the counter affidavit filed, several allegations made had been specifically denied. Specific stand was taken that the dispute is only on TS No.8 as per the TSLR entry in S.Nos.210/13, 210/14 and 210/17, Block E, Ward No.137 of Lalaguda village, Secunderabad Mandal. As per the Town Survey Land Record it has earmarked 30' wide road as existing shown as

GVM road. It is also further stated in paragraph 4 of the counter affidavit that the petitioner and other co-owners decided to develop the property by constructing apartment and approached the respondent-Corporation for building permission in plot Nos.8 and 9, which is part of lay out sanctioned. The Gram Panchayat approved the lay out before merging of this area into Municipal Corporation of Hyderabad. This area was merged in Municipal Corporation of Hyderabad in the year 1991. The Joint Collector, Hyderabad, has given a certificate vide No.F3/698/2001 in the month of February, 2001 stating that the land applied for NOC in plot Nos.8 and 9, Vijayapuri, Maredpally falls in TS Nos.7 and 9, Block-L, Ward No.137, Lalaguda village, which is classified as a patta, hence, recommended to an extent of 7385 sq.meters for grant of building permission subject to ULC clearance. The respondent is having dispute about the TS No.8. As per the TSLR, the TS No.8 is a GVM road, an area of 16.82 Esq. The respondent corporation had not raised any objection in respect of TS.7, TS.No.9 as the land in these survey numbers was shown as patta land in Town Survey Records. TS No.8 is concerned 30' wide road linking between main road leading from Tarnaka junction to Lalaguda fly over and locality towards western side of the property is passing through the TS No.8 and the land is shown as GVM road in Town Survey Land Records. Further specific stand was taken in paragraph 5 of the counter affidavit that the respondent-Corporation had granted the building permission for Block-A and the same was released on 5.3.2003. Subsequently for Blocks B and C, the same could not be considered since it was brought to the notice of the respondent that GVM road is passing covered TS No.8 from the schedule of the petitioner's property. Since 30' wide road is passing through TS No.8 indicated as GVM land in TSLR, it was bifurcated into two portions in between T.Nos.76, 9 to 14. The lay out permission might have been obtained without verifying the TSLR. Since it is a

GVM road, a letter was addressed to the Collector, Hyderabad, dated 4.11.2003 requesting for his opinion about TS Nos.7, 8 and 9 and also requested the Collector, Hyderabad for furnishing TSLR sketch plan indicating the boundaries of each TS number and area covered for taking action on the building proposals submitted by the petitioner, but so far no reply is received from the Collector, Hyderabad. The reply is awaited and after receiving the opinion in the matter from the Collector, Hyderabad, further action will be taken by the respondent on the building proposals. A letter was also addressed to the petitioner about the action taken by the respondent on TS Nos.7, 8 and 9 and requested the respondent not to proceed with any construction which was accorded vide permit No.199/94 dated 4.3.2003. The petitioner had not stopped the construction and proceeding with the construction against the sanctioned plan and now the stage of the construction as follows:

- (a) The petitioner completed major area of the building consisting 29'9" X 126 made construction consisting stilt + 5 floors only painting work to the building, flooring finishing, sanitation fixing is left and the remaining portion consisting 29" x is under progress and laid roof for stilt floor, ground floor and erected RCC columns with the intention to carry second floor construction.
- (b) The applicant also laid the balconies within the mandatory open spaces towards northern, western and southern side in Block a more than permitted i.e., 6" wide instead of 3" and covered the same converting into rooms.

Further it was stated that the petitioner had not complied with the request of the respondent office and has been carrying on the construction against the sanctioned plan. Further specific stand was taken in the counter affidavit that as per the extract of TSLR issued by the Mandal Revenue Officer, Secunderabad, it is clearly indicated that a 30' wide road in TS No.8 as GVM road with an area of 0.16.82 Sq.

Meters. The further stand taken by the respondent-Municipal Corporation is that the petitioner has not been proceeding with construction as per sanctioned plan and in view of the same the petitioner was requested to stop construction till the matter is settled relating to TS No.8. Further it was stated in paragraph 7 of the counter affidavit that the respondent had granted permission for Block A and released permit No.199/94 dated 4.3.2003 stipulating certain conditions particularly that the petitioner has to proceed with the constructions strictly as per the sanctioned plan and if any additions or alterations are supposed to be made, the petitioner has to approach the respondent for obtaining revised permission before taking up any construction deviating the sanctioned plan. It is also stated that the petitioner had approached the respondent office along with revised plans and as already stated the revised plans were not considered due to GVM road passing in TS No.8 which is bifurcating the schedule property. The respondent office had directed the petitioner to stop construction till the opinion is received from the Collector, Hyderabad.

8. The order dated 3.11.2003 in letter No.0945/CSC/TP7/03-4811 reads as hereunder:

Sub: MCH TPS – H.O. – Proposed construction of stilt + 5 upper

floors in Block B and C and stilt + 5 upper floors in Block A in Pr. No.12-5-35/C/1/6, 35/1, 4,5,6 & 10 to 14, in Sy.No.210/13, 14 & 15 at Vijayapuri Colony, Tarnaka, Lalaguda, Sec'bad – Reg.

Ref: 1. Your Building application dt. 9.10.03 in file No.0945/CSC/TP7/03.

2. This Office letter No.0945/CSC/TP7/03/4442, dt. 10.10.03.

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With reference to the subject cited, it is to inform that the proposals submitted by you for the construction of stilt + 5 upper floors in Block B and C and upper floors in Block A in Pr. No.12-5-35/C/1/6, 35/1, 4,5,6 & 10 to 14 in Sy. No.210/13, 14 & 15, Vijayapuri Colony, Tarnaka, Lalaguda, Sec'bad, have been examined by this office.

In this connection, it is to inform that as per the previous sanctioned plan a 40'-0" wide road is existing on the southern side of the property. Facing to this 40'-0" wide road one Sri K.B.Chowdary has submitted building plans in file No.635/TP/MCH/SD/B2/03, duly enclosing certain documents, TS Records along with the sketch plan issued by the Mandal Revenue Officer, Lalaguda (village) Sec'bad Mandal, in file No.B3/1260/93. On verification of the TSLR plan it is observed that 40'-0" wide road is passing in between the proposed site and Sri K.B.Chowdary's property bearing TS No.15 and recorded under road. Further, it is also noticed that a 30'-0" wide road is passing through your site which is recorded as TS No.8 and GVM Road. Thus the proposed site is bifurcated into two portions on either side by 30'-0" road i.e., T.S.No.7 and TS No.9.

Further, it is to inform that the plot Nos.8 & 9 are falling in the lay out approved by Zilla Parishad of Tarnaka area before merging in MCH, wherein the 30'-0" road is not indicated. In this case earlier, permission was granted vide permit No.163/74/E, dt. 3.6.82 and revised permission on 9.10.82, for construction of compound wall on the entire site area. The SO., ULC has issued clearance proceedings in Pr.No.12395/76, 12397/76, 12399/76 and 12400/76, dt. 11.11.93 and 31.12.94. Further, the J.C., has issued NOC vide Memo No.F3/698/01, dt.16.2.01, that the plot Nos.8 & 9, Vijayapuri falls in TS Nos.7 & 9, Block-L, Ward-137 of Lalaguda village, which is classified as patta. Hence, the NOC is recommended to an extent of 7308.50 sq. mts.

During the Building Committee meeting held on 8.11.01, wherein the nominee of SO, ULC, Dy. Tahsildar has attended the meeting. But, not raised about the TS No.8 in 30'-0" wide road. Hence, permission was granted vide permit No.199/94, dt.4.3.03. Now, you have submitted revised plans on the same site area. Neither the JC, nor the S.O. ULC. Indicated about TS No.8 i.e., 30'-0" wide road while giving clearance not informed to MCH. Further, you have also not brought to the notice of MCH. Hence, this fact could not be cited by MCH while granting the permission.

In view of the above opinion of the Collector, Hyderabad Dist., is required about TS.Nos.7, 8 & 9 separately along with TSLR sketch plans indicating the boundaries of each TS Nos., and the area covered.

Therefore, you are hereby informed to stop the further construction work forthwith till the matter is cleared by the Joint Collector, Hyderabad. Failing which further action will be taken as per rules.

Yours faithfully,  
Sd/- Chief City Planner,  
MCH.

9. From the respective stands taken by the parties, it is clear that already a plan had been approved relating to Block A and because of some confusion relating to the consideration of the revised plans submitted in relation to Block B and C, the respondent-Corporation thought of issuing these directions. In such circumstances, the writ petitioner approached this Court and it is stated that in accordance with the already approved plan, only Block A had been completed. It is needless to say that if there are any deviations from the already approved plan in relation to Block A, the respondent-Corporation is at liberty to initiate appropriate action if need be in accordance with the provisions of Hyderabad Municipal Corporation Act, 1955. It is also needless to say that if the writ petitioner already had completed the construction relating to Block A in accordance with the already approved plan, and in the absence of any deviations, unless otherwise in accordance with law any further action is taken, the respondent-Corporation is not entitled to interfere with Block A and Block A alone.

10. The dispute appears to be in relation to the revised plans submitted in the context of Block B and Block C, the further construction activity to be taken up by the writ petitioner. There appears to be some controversy in relation thereto. This Court time and again held that for approval of plans or considering the building applications, the entries made in TSLR alone cannot be made the basis if the parties are entitled to satisfy otherwise by placing the other acceptable material relating to the title. It is also needless to say that repeatedly this Court held that No Objection Certificate from the

revenue authorities cannot be insisted upon. The views expressed by this Court in Dr.G.Anand Kumar Reddy's case (1 supra), Hyderabad Potteries Private Limited case (2 supra) and District Collector's case (3 supra) may be conveniently referred to in this regard. When that being so, it is needless to say that the respondent-Corporation may have to consider the revised plans submitted in relation to Block B and Block C also in accordance with law keeping in view the decisions referred to supra.

11. In view of the above, this court is of the considered opinion that the Writ Petition be disposed of with the following directions:

“Respondent-Municipal Corporation of Hyderabad not to interfere with the Block A construction already made by the writ petitioner. However, this order may not come in the way if the Municipal Corporation of Hyderabad is otherwise satisfied that the construction already made in relation to Block A is in deviation of the already granted permit-approved plan. It is also further directed that the Municipal Corporation of Hyderabad to consider the revised plans submitted in relation to Block B and Block C also in plot Nos.8 and 9, Vijayapuri, Lalaguda, Hyderabad, in the light of the decisions referred to supra”.

12. Accordingly, with the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

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19.10.2006

SSR  
LR COPY TO BE MARKED: YES/NO.

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<sup>1</sup>2006(4) ALD 657.

<sup>2</sup>2001(3) ALD 600.

<sup>3</sup>2000(4) ALD 126.